

ADVISORY OPINION 2000-010

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

December 29, 2000

Mr. Robert P. Benson, Jr.
Suite 2150
One Riverfront Plaza
Louisville, KY 40202-2981

Dear Mr. Benson:

This is in response to your November 28, 2000 letter requesting an advisory opinion on behalf of Armstrong For Mayor Campaign Committee ("Armstrong Committee"). You request guidance on the ability of the Armstrong Committee to make expenditures in light of the recent referendum providing for the merger of Louisville and Jefferson County in a new government to take effect in 2003. Further, in telephone conversations preceding your request, you explained that constituent and prospective voter communications were the type of expenditures for which the Armstrong Committee sought clarification.

KRS 121.180(10) governs the disposition of campaign funds after the election, providing in pertinent part:

No candidate ... shall use or permit the use of contributions or funds solicited or received for the person ... to further the candidacy of the person for a different public office ... Except as provided in KRS 121A.080(6), any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further ... the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, be returned pro rata to all contributors, or in the case of a partisan candidate, be transferred to the state or county executive committee of the political party of which the candidate is a member except that a candidate, committee, or an official may retain the funds to ... to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the Internal Revenue Code... [Emphasis added.]

Generally, under KRS 121.175, a candidate who retains campaign funds under KRS 121.180(10) to seek a future-year election to the same office may use those funds for “communications with constituents and prospective voters” that are made directly and primarily in support of his future-year candidacy. KRS 121.175(1); see also, KREF Advisory Opinion 1993-031 (opining that a mayor could make post-election expenses provided she could prove that the expenditures were made directly and primarily in support of her future-year candidacy and were not part of the official activities of her office.) However, under KRS 121.180(10), a candidate may not use existing campaign funds to further his candidacy for a different public office. See generally, KREF Advisory Opinion 2000-009.

Your letter explains that the current office Mayor David Armstrong holds is Mayor of the First Class City of Louisville. The new government to be formed in 2003 will create the office of Mayor of Greater Louisville, which will encompass all of Jefferson County. As such, the positions are different public offices within the meaning of KRS 121.180(10).

Therefore, the Armstrong Committee may not expend funds to further David Armstrong’s election to the office of Mayor of Greater Louisville, including expenditures for constituent communications. However, there is nothing to prohibit the Armstrong Committee from making any final disbursements to resolve the administration of the current account and to dispose of any remaining balance in the manner provided by KRS 121.180(10).

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This opinion reflects the Registry's consideration of the specific transaction posed by your letter and clarified in related telephone conversations. If you have any additional questions, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

Enclosure

RFC/jh

Cc: Registry Members
Sarah M. Jackson, Executive Director